

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Patrick Lynn, Police Chief/(954)693-8320

PREPARED BY: Police Administration/af

SUBJECT: Resolution

AFFECTED DISTRICT: 2

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: MITIGATION - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING A REQUEST FOR MITIGATION OF CODE COMPLIANCE LIEN IN CASE NO.04-0683 FROM \$20,687.66 IN AMOUNT TO \$5,834.10; AND PROVIDING AN EFFECTIVE DATE.

REPORT IN BRIEF: To authorize the approval request for mitigation of a code complian lien in case no. 04-0683 from \$20,687.66 in amount to \$5,834.10. The Town of Davie Code Compliance Division has determined that the four (4) violations issued on July 27, 2004 have been corrected per the inspection date of October 15, 2009. The code compliance mitigation guideline has proscribed the mitigation against Motiva Enterprises. If this mitigated amount of \$5,834.10 is not paid to the Town within 45 days of the enactment of this resolution then the lien shall revert to the original amount of \$20,687.66.

PREVIOUS ACTIONS:

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

If yes, expected cost: \$

Account name and number:

If no, amount needed: \$

What account name and number will funds be appropriated from:

Additional Comments:

RECOMMENDATION(S): Motion to approve resolution

Attachment(s): Resolution, Code Compliance Mitigation Synopsis, TOD Mitigation Application Review Form, Mitigation, Worksheet, Review Summary, Guidelines, Inspection Report, Special Magistrate Order and Correspondence from Pinnacle Development Services.

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING A REQUEST FOR MITIGATION OF CODE COMPLIANCE LIEN IN CASE NO.04-0683 FROM \$20,687.66 IN AMOUNT TO \$5,834.10; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Motiva Enterprises have requested a mitigation of a code compliance lien from

\$20,687.66; and

WHEREAS, the Town of Davie Code Compliance Division has determined that the violation of

code sections 12-243(d)(5), 12-238(J)(1), 12-238(c) and 12-33(U) were corrected; and

WHEREAS, the Town of Davie Code Compliance Division mitigation guideline has proscribed

a mitigation amount equal to \$5,834.10; Motiva Enterprises and the Town of Davie Code Compliance

Division are agreeable to the mitigation of the code compliance lien.

WHEREAS, the Town Council is agreeable to such mitigation of the code compliance lien.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. That the certain code compliance lien arising out of Case No. 04-683 in the amount of \$20,687.66 against Motiva Enterprises, is hereby mitigated in amount to \$5,834.10.

SECTION 2. That this mitigated amount of \$5,834.10 be paid to the Town within 45 days of the enactment of this Resolution. Should this amount of \$5,834.10 not be paid within the specified time the lien shall revert to the original amount of \$20,687.66.

PD – Mitigation Case No. 04-0683

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2009

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2009

Code Compliance Mitigation Case No04-0683 Synopsis

- 1. Town Council District Number:** 2
- 2. Property Location:** 2400 South University Drive
- 3. Notice of Violation Issuance Date:** July 9, 2004
- 4. Code Violation Sections:** 12-243(d)(5) Banner permit required
12-238(J)(1) Signs Prohibited in all districts
12-238 (c) Builder permits required
12-33(U): Nuisance/eyesore.
- 5. Notice of Violation Hearing Date:** July 27, 2004
Special Magistrate Final Order issued
and respondent complied. *NOTE: Final
Order remains in force for five (5) years
from date of issuance.*
- 6. Non-Compliance Investigation Start:** March 2, 2009
- 7. Non-Compliance Notice of Violation
Date:** March 10, 2009
- 8. Non-Compliance Hearing Date:** March 24, 2009
Special Magistrate Order Imposing
Municipal Code Enforcement Fine for
11 occurrences of violations
- 9. Total Fine:** Five (5) days @
\$500/day per day and Eleven (11) days for 3 violations @
\$500/day per violation along with interest. \$ 20,687.66
- Cost Recovery Fee \$ 500.00
- 10. Mitigation Guideline Amount:** \$ 5,834.10
Respondent agreed to Town guideline
amount.
- 11. Special Magistrate Mitigation Hearing:** None
- 12. Town Base Fee Costs:** \$1,300.00
- 13. Attachments:** 1. Pinnacle Development Letter, 08/26/09

**TOWN OF DAVIE
MITIGATION APPLICATION REVIEW FORM**

SECTION 1: (To be completed by Code Compliance Supervisor)

1. Name of Respondent(s)/Applicant(s): Motiva Enterprise LLC
2. Case Number: #04-0693
3. Total amount of Code Compliance Lien(s)/Administrative Fine(s): \$20,687.66
4. Is Respondent(s)/Applicant(s) in compliance with applicable Town Code Sections? ☒ Yes ☐ No
(If the answer to Question 4 is no, do not complete Question 5, as compliance is a prerequisite to further processing.)
5. Mitigation amount obtained from the Town's Mitigation Guidelines: \$5,834.10

SECTION 2: (To be completed by Respondent(s)/Applicant(s))

1. Please state any and all reasons why the Town should agree to mitigate the Code Compliance Lien(s):

The amount offered by the town's mitigation guidelines of
\$5,834.10 is a reasonable fee.

Signature: Date: 10-22-2009

2. Please indicate the amount which you request the Code Compliance Lien(s) be mitigated to: \$ 5,834.10

NOTE: The Code Compliance Division will make a recommendation to the Town Council to either accept or deny your mitigation request. Please be advised that if you request mitigation to an amount less than the amount recommended by the Code Compliance Division in Section 1, Question 5, the Code Compliance Division shall automatically make a recommendation to deny your mitigation request. In the event you do not agree with the recommendation of the Department Head as set forth in Section 3 below, the matter will be referred to a Special Master who will make a recommendation to the Town Council. **The decision to grant or deny the request for mitigation will be made by the Town Council.** In the event the Town Council approves your mitigation request, you must pay the mitigated amount to the Town of Davie within 45 days of Town Council approval or the Code Compliance Lien(s)/Administrative Fine(s) will remain in effect in the original amount.

SECTION 3: (To be authorized by Department Director)

The Code Compliance Division recommends that the specific mitigation request made by the Respondent(s)/Applicant(s), in Section 2, to mitigate the Code Compliance Lien(s)/Administrative Fine(s) in Case Number # 04-0693 from a total of \$20,687.66 to the amount requested by the Respondent(s)/Applicant(s) which is \$5,834.10, may be considered for approval.


Code Compliance Official

11/03/09
Date

TOWN OF DAVIE CODE COMPLIANCE
MITIGATION WORKSHEET
CASE 04-0683

Respondent(s): Motiva Enterprises

Address: 2400 South University Drive
Davie, FL

Fine/Lien Amount: \$20,687.66

Mitigation Recommendation:
(as per approved mitigation guidelines)

Case

A) 12.5% of \$20,687.66 = \$ 2,585.96

B) 7% for each (1) period of 60 days of non-compliance
For a total of days or part thereof = \$ 1,448.14

C) Mitigation Base Fee = \$ 1,300.00
(Town costs incurred by
Code Compliance)

Cost Recovery \$ 500.00

Total = \$ 5,834.10

MITIGATION REQUEST SUMMARY

DATE: August 28, 2009
NAME: Motiva Enterprise LLC
ADDRESS: 2400 South University Drive

CASE: 04-0693

SUMMARY:

Date respondent cited: July 09, 2004
Date of Final Order: July 28, 2004

Non-Compliance Hearing(s): March 10, 2009

Fine/Lien(s) Imposed along with interest: \$ 20,351.24

Department Guideline recommended mitigation amount:	\$ 5,834.10
Amount the respondent desires to pay:	\$ 5,834.10

The property owner was cited for the following violations of the Town of Davie Code:

12-243(d)(5) Banner permit required
12-238(J)(1) Signs Prohibited in all districts
12--238 (c) Builder permits required
12-33(U): Nuisance/eyesore.

The recommended mitigation amount is equal to \$ 5,834.10; this amount will cover the town expenses and the amount may be considered for approval by the Town Council; thereafter, the respondent shall be given forty-five (45) days to pay the approved mitigated lien and fine amount.

DANIEL J. STALLONE
CODE COMPLIANCE OFFICIAL

MITIGATION GUIDELINES

<u>FINE AMOUNT</u>	<u>RECOMMENDATION</u>
Fine to \$10,000	7.5% of the amount plus an additional 5% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$10,000 - \$20,000	10.0% of the amount plus an additional 6% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$20,001 - \$30,000	12.5% of the amount plus an additional 7% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$30,001 - \$40,000	15.0% of the amount plus an additional 8% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$40,001 - \$50,000	17.5% of the amount plus an additional 9% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$50,001 - \$60,000	20.0% of the amount plus an additional 10% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$60,001 - \$70,000	22.5% of the amount plus an additional 11% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$70,001 - \$80,000	25.0% of the amount plus an additional 12% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$80,001 - \$90,000	27.5% of the amount plus an additional 13% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$90,001 - \$100,000	30.0% of the amount plus an additional 14% For each sixty (60) days of violation plus actual costs incurred by the Town.
Over \$100,000	35.0% of the amount plus an additional 15% For each sixty (60) days of violation plus actual costs incurred by the Town.

This schedule would be utilized for first time violators and repeat violators.

MITIGATION BASE FEE (COST OF CASE ADMINISTRATION AND DEVELOPMENT) SHALL BE ADDED TO THE TOTAL DERIVED FROM APPLICATION OF ABOVE GUIDELINES. THE MITIGATION BASE FEE IS BASED UPON THE EXPENSES INCURRED BY TOWN EMPLOYEES AND ALL ACCOMPANYING COSTS.
MITIGATION BASE FEE* \$1,300.00

*Subject to revision as per current staff salaries.

PINNACLE
DEVELOPMENT SERVICES, INC.

7450 GRIFFIN ROAD, SUITE 150, DAVIE, FL 33314
(954) 252-2660 - FAX (954) 252-2663
PE# 51407 EE# 9856

RECEIVED

AUG 26 2009

CODE COMPLIANCE

August 26, 2009

VIA E-Mail

Town of Davie Code Enforcement
Town of Davie, Florida
1230 South Nob Hill Road
Davie, FL 33324
Attn: Danny Stallone, Grace Farrar

RE: Case No. 04-0683
Request for Mitigation Hearing
Shell Gas Station @ 2400 S. University Drive

Dear Mr. Stallone:

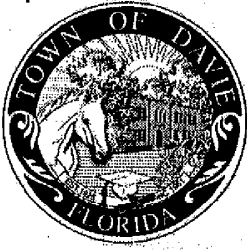
On behalf of Motiva Enterprises, LLC and Shell Oil Products Company, U.S., we hereby request to be heard in the above-captioned matter at your next scheduled hearing in order to mitigate the fine that has been assessed.

Please feel free to contact me at (954) 252-2660 should you have any questions or require any additional information regarding this matter.

Respectfully,
Pinnacle Development Services, Inc.

Curt A. Keyser, P.E.
President

cc: Jim Diveronica, Shell Oil Products, U.S.
Stu Lutz, Herbert Lutz & Co., Inc.
File SH-00851



TOWN OF DAVIE
POLICE DEPARTMENT
CODE COMPLIANCE DIVISION

1230 SOUTH NOB HILL ROAD • DAVIE, FLORIDA 33324
PHONE: 954.693.8237 • FAX: 954.693.8399 • WWW.DAVIE-FL.GOV

MITIGATION INSPECTION REPORT

CASE NO. 04-0683

DATE FINAL ORDER ISSUED: _____ INSPECTION DATE _____

RESPONDENT(S) MOTIVA ENTERPRISES LLC

PROPERTY ADDRESS 2400 S UNIVERSITY DRIVE

VIOLATIONS.....☒.....COMPLIED.....NOT COMPLIED (check one)

MITIGATION HEARING REQUEST (DATE) _____

LIST VIOLATIONS NOT COMPLIED:

1. _____
2. _____
3. _____
4. _____
5. _____

Comments: _____

INSPECTOR
SIGNATURE
DJS 10/08

DATE 10-15-09

RETURN TO:
TOWN OF DAVIE
ATTN: TOWN CLERK
6591 S.W. 45TH STREET
DAVIE, FL 33314-3399

INSTR # 106561560
OR BK 46165 Pages 956 - 957
RECORDED 04/24/09 12:44:15
BROWARD COUNTY COMMISSION
DEPUTY CLERK 1922
#1, 2 Pages

THIS INSTRUMENT PREPARED BY:
ALAN L. GABRIEL, ESQ.
Weiss Serota Helfman Pastoriza Boniske & Cole, P.L.
200 E. Broward Blvd., Suite 1900
Fort Lauderdale, Florida 33301

TOWN OF DAVIE CODE
ENFORCEMENT SPECIAL
MAGISTRATE

THE TOWN OF DAVIE, Broward
County, Florida, A Florida
Municipal corporation,

CASE NO. 04-0683

Petitioner,

v.

MOTIVA ENTERPRISES LLC,

Respondents.

**ORDER IMPOSING
MUNICIPAL CODE ENFORCEMENT LIEN
AND ADMINISTRATIVE FINE**

THIS MATTER, having come before the TOWN OF DAVIE, SPECIAL MAGISTRATE on the 24th day of March, 2009, on the Motion of the Town Code Enforcement officer, pursuant to notice, to impose sanctions against said Respondents, MOTIVA ENTERPRISES LLC, for failure to comply with the Final Order of the Special Magistrate in this matter, pursuant to the authority of section 162.09, Florida Statutes, and the Special Magistrate having heard the testimony of the Town Code Enforcement Officer, the witnesses and having reviewed its file in the matter, finds as follows:

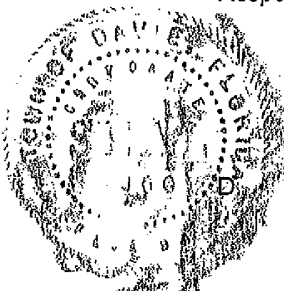
A. That Respondents have violated section(s) 12-243(d)(5), 12-238(J)(1), 12-238(C) and 12-33(U) of the Davie Town Code, contrary to the terms of the Final Order entered in the above styled matter on July 28, 2004.

B. The aforesaid violation of the aforementioned section(s) of the Davie Town Code are a violation of the aforesaid Final Order, which has been served upon Respondents.

C. Since the date heretofore set for compliance by the aforesaid Final Order, Respondents have failed to comply therewith in the following respects:

- i. For five (5) days prior to the date of this meeting the aforesaid violation of Section(s) 12-238(J)(1), and for eleven (11) days prior to the date of this meeting the aforesaid violation of Section(s) 12-243(d)(5), 12-238(C) and 12-33(U) of the Davie Town Code continued to exist uncorrected and unabated.

Respondents have accordingly violated the Final Order of the Special Magistrate as detailed above, and the said violations shall be punished by fine of \$500.00 for each



day each such violation continued to exist after the date set for compliance, the same being five (5) days for one violation and, eleven (11) days for three violations for a total administrative penalty of NINETEEN THOUSAND AND 00/100THS (\$19,000.00) DOLLARS. The Special Magistrate has also assessed a cost recovery fine in the amount of \$500.00 to cover the costs incurred by the Town in the prosecution of this matter.

It is thereupon **ORDERED** as follows:

1. Respondents shall be fined the sum of \$500.00 for each day of each violation of the Special Magistrate's Final Order in this matter as aforesaid, plus the cost recovery fine in the amount of \$500.00, for a total administrative penalty of NINETEEN THOUSAND FIVE HUNDRED AND 00/100THS (\$19,500.00) DOLLARS as set forth above.

2. The Town of Davie Attorney is hereby directed to file and record this Order among the Public Records of Broward County, Florida which shall constitute a lien against any personal property of Respondents, and the following described real property of Respondents in the amount of NINETEEN THOUSAND FIVE HUNDRED AND 00/100THS (\$19,500.00) DOLLARS as provided in section 162.09, Florida Statutes, and to proceed with the enforcement and collection of same as provided by law, to wit:

2400 S University Drive, Davie, Florida (Folio # 5041 21 14 0010) a/k/a

SHELL SUBDIVISION NO 3 128-36 B PARCEL A

DONE AND ORDERED in Davie, Broward County, Florida, this 26th day of March, 2009.

TOWN OF DAVIE

BY: 

ALAN L. GABRIEL, ESQUIRE
SPECIAL MAGISTRATE

Copies furnished:
MOTIVA ENTERPRISES LLC
(CERTIFIED MAIL)
Clerk, Code Enforcement
Town Prosecutor
Code Inspector

04-0683/RB.F1